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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,733	06/29/2001	J. Rob Bowers	14531.110	9135
7590	03/21/2006		EXAMINER	
RICK D. NYDEGGER WORKMAN, NYDEGGER & SEELEY 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			LAYE, JADE O	
			ART UNIT	PAPER NUMBER
			2623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/896,733	BOWERS, J. ROB
	Examiner Jade O. Laye	Art Unit 2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 3,14 and 31-37 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

I. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/31/06 has been entered. Accordingly, the objections applied in the previous action have been withdrawn.

Response to Arguments

II. Applicant's arguments with respect to the *Bommaiah* reference have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

III. Claims 1, 2, 4, 6, 10, 11, 21, 25, 27, and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by *Yu*. (US Pat. No. 5,561,456).

As to Claim 1, *Yu* discloses a video on demand system utilizing a scheduler (i.e., aggregation module), which “batches” viewer request for certain media and subsequently serves all viewers using a single video stream. The system further includes a buffer, which is used to store various portions of the stream, thereby allowing the subscriber to pause/resume their respective streams. (Abstract; Fig. 1; Col. 1, Ln. 11-16, 60-Col. 2, Ln. 3; Col. 4, Ln. 15-Col. 5, Ln. 24). It is inherent the system employ receiver identifiers in order to keep track of which subscribers are requesting said media. Accordingly, *Yu* anticipates each and every limitation of Claim 1.

Claims 10, 11, 25, and 27 either correspond to or are encompassed within the limitations of claim 1. Thus, each is analyzed and rejected as previously discussed.

As to Claim 2, *Yu* further teaches the scheduler is remote from the receivers. (Fig. 1). Accordingly, *Yu* anticipates each and every limitation of Claim 2.

As to Claim 4, *Yu* further teaches the system server can buffer the single stream to allow interactive user functions (e.g. pause/resume). (Col. 4, Ln. 33-37). These buffered streams are, in essence, “separate instances” of the media. Accordingly, *Yu* anticipates each and every limitation of Claim 4.

As to Claim 6, *Yu* further teaches the use of multicasting. (Col. 5, Ln. 23-24). Accordingly, *Yu* anticipates each and every limitation of Claim 5.

Claim 21 is encompassed within the language of claim 1. Thus, it is analyzed and rejected as discussed therein.

The limitations of Claim 38 are encompassed within Claim 1. *[Furthermore, the system of Yu analyzes the viewer request in order to determine when and how to deliver said media (i.e., based upon changes to the first connection rate). (citations of Claim 1).]*

Claim 39 is encompassed within the language of Claim 1. Thus, it is analyzed and rejected as discussed therein.

As to Claim 40, *Yu* further teaches the use of an aggregation module. (discussed previously under rejection of claim 1). Accordingly, *Yu* anticipates each and every limitation of Claim 40.

Claim 41 is encompassed within the language of claim 1. Thus, it is analyzed and rejected as discussed therein.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

IV. Claims 5, 7, 15-17, 20, 29, 30, 42, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *Kuhn*. (US Pat. Pub. No. 2002/0157112).

Claim 5 recites the method of Claim 1, further comprising selecting a media format for delivering the media stream. As discussed above, *Yu* anticipates each and every limitation of Claim 1, but fails to specifically disclose selecting a media format. However, within the same field of endeavor, *Kuhn* discloses a similar system which transcodes multimedia data into various

media formats (i.e., MPEG). (Pars. [0001, 0023, 0045]). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Yu* and *Kuhn* in order to provide a system which can facilitate the distribution of multimedia data in various media formats.

Claims 15 and 29 correspond to Claim 5. Thus, each is analyzed and rejected as previously discussed.

Claims 7, 20, 30, 42, 48 are encompassed within the limitations of Claim 5. Thus, each is analyzed and rejected as discussed previously.

Claim 16 mirrors the language of claim 4. Thus, it is analyzed and rejected as discussed therein.

Claim 17 is encompassed within the language of claim 1. Thus, it is analyzed and rejected as discussed therein.

V. Claims 8, 9, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *Durana et al.* (US Pat. No. 6,018,765).

Claim 8 recites the system of claim 1, wherein the system comprises a cable system having a plurality of used and unused channels. As discussed above, *Yu* anticipates each and every limitation of claim 1, but fails to specifically disclose the use of used and unused channels. However, within the same field of endeavor, *Durana et al* disclose a similar system which utilizes multiple used and unused channels. (Abstract; Col. 2, Ln. 5-13; Col. 7, Ln. 19-37). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of

Applicant's invention to combine the systems of *Yu* and *Durana* in order to provide a system which greater transmission flexibility.

Claim 9 recites the method of claim 8, further comprising identifying when to deliver the streaming media on at least one of the unused channels. As discussed above, the combined system of *Yu* and *Durana* disclose all limitations of claim 8, and *Yu* further teaches the system contains a scheduler which determines when to deliver said media. (citations of Claim 1). Accordingly, the combined systems of *Yu* and *Durana* disclose all limitations of claim 9.

Claim 26 recites the computer program product of claim 25, wherein the computer instructions further comprise program code means for generating each request form each of the plurality of receivers using an input device. As discussed above, *Yu* anticipates each and every limitation of claim 25, but fails to specifically discuss the use of a remote control. However, *Durana* discloses the use of such a device. (Col. 4, Ln. 4-11). Accordingly, the combined systems of *Yu* and *Durana* disclose all limitations of claim 26.

VI. Claims 12-13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu et al.*

Claim 12 recites the method of claim 11, wherein the network is selected from the group consisting of a wide area network and a local area network. As discussed above, *Yu et al* anticipate each and every limitation of claim 11, and further teaches the use of a communication network, which encompasses and/or render obvious both a local and wide area network. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of

Applicant's invention to modify the system of *Yu* to also include a local or wide area network, thereby providing a more flexible distribution network.

Claim 13 recites the method of claim 12, wherein the network is the Internet. The Examiner takes Official Notice that, at the time of Applicant's invention, the use of an Internet based communications networks was notoriously well known in this art. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of *Yu*, thereby providing a system having a flexible communications platform.

Claim 28 recites the method of claim 27, further comprising delivering the buffered single copy of the streaming media from the aggregation module to the termination system. The Examiner takes Official Notice that, at the time of Applicant's invention, the use of cable modem distribution systems was well known in this art. Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of *Yu*, thereby providing a system having a flexible communications platform.

VII. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *Kuhn* as applied to Claim 15 above, and further in view of *Durana*.

Claim 18 recites the method of Claim 15, and limitations which will not be recited herein (but each will be addressed in turn). As discussed above, *Yu* and *Kuhn* disclose all limitations of Claim 15, but fail to disclose the remainder of the limitations. However, within the same field of endeavor, *Durana et al* disclose a similar system which utilizes multiple used and unused channels. (Abstract; Col. 2, Ln. 5-13; Col. 7, Ln. 19-37). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine

the systems of *Yu*, *Kuhn*, and *Durana* in order to provide a system with greater transmission flexibility.

Claim 19 recite the method of claim 18, wherein the system is a cable, television, or satellite system. As discussed above, the combined system of *Yu*, *Kuhn*, and *Durana* disclose all limitations of claim 18, and *Durana* further discloses a cable system (*Durana* is a cable system). Accordingly, the combined systems of *Yu*, *Kuhn*, and *Durana* disclose all limitations of claim 19.

VIII. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *McClain et al.* (US Pat No. 6,722,214).

Claim 22 recites the method of claim 21, further comprising limitations too numerous to recite herein. (please refer to claim sheet). As discussed above, *Yu* anticipates each and every limitation of claim 21, but fails to specifically disclose the limitations of claim 22. However, within the same field of endeavor, *McClain et al* disclose a similar system which compares a rating code associated with a web page (i.e., URL) against a stored policy list (i.e., rating list), in order to determine if the requesting receiver is authorized to receive said requested content. (Abstract; Col. 2, Ln. 55-65). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Yu* and *McClain* in order to provide a system with advanced filtering techniques.

Claim 23 is encompassed within the language of claim 22. Thus, it is analyzed and rejected as previously discussed.

Claim 24 recites the method of claim 22, wherein the comparing occurs upon the proxy module. As discussed above, the combined systems of *Yu* and *McClain* disclose all limitations

of claim 22, and *McClain* further discloses the proxy module performs said comparison. (Col. 2, Ln. 17-35). Accordingly, the combined systems of *Yu* and *McClain* disclose all limitations of claim 24.

IX. Claims 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *Brown*. (US Pat No. 5,771,435).

Claim 43 recites the system of Claim 38, wherein the aggregation module is configured to dynamically vary delivery of the requested media as either independent streams or as a multicast depending on traffic load on the network. As discussed above, *Yu* anticipates each and every limitation of Claim 38, but fails to disclose the limitation of Claim 43. However, within the same field of endeavor, *Brown* discloses a similar system which transmits a video on demand program (i.e., unicast) or near video on demand program (i.e., multicast) based upon network traffic. (Abstract; Col. 2, Ln. 55-67). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Yu* and *Brown* in order to provide a "smart" system which only unicasts programming when it has sufficient bandwidth to do so.

Claim 44 is encompassed by Claim 6. Thus, it is analyzed and rejected as discussed therein.

The limitations of Claim 45 are encompassed within the limitations of Claim 44. Thus, it is analyzed and rejected as previously discussed.

X. Claims 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yu* in view of *Brown* as applied to claim 43 above, and further in view of *Durana*.

Claim 46 recites the system of Claim 45, wherein each of the receivers is capable of displaying a plurality of channels, at least of which is unused. As discussed above, the combined systems of *Yu* and *Brown* disclose all limitations of Claim 45, but fail to disclose the limitations of Claim 46. However, within the same field of endeavor, *Durana et al* disclose a similar system which utilizes multiple used and unused channels. (Abstract; Col. 2, Ln. 5-13; col. 7, Ln. 19-37). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Yu*, *Brown*, and *Durana* in order to provide a system with greater transmission flexibility.

Claim 47 is encompassed within the limitations and rejection of Claim 46. Accordingly, it is analyzed and rejected as previously discussed.

Conclusion

XI. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. *Li et al* (US Pat. No. 6,543,053) disclose a similar system.
- b. *Hodge* (US Pat. No. 6,938,268) discloses a similar system.
- c. *Aggrawal et al* (US Pat. No. 5,631,694) discloses a similar system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye

Initials: JL

March 15, 2006.



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